

Legal Aspects of Initial Coin Offering

Abstract

The thesis deals with Initial Coin Offering (ICO) phenomenon. The Initial Coin Offering is a type of funding using cryptocurrencies, which the current legal literature describes as tokens. The thesis has a goal of describing the basics of cryptocurrencies functionality, the explanation of Initial Coin Offering phenomenon and the legal classification of cryptocurrencies emitted in an ICO. The fother parts of the thesis are dedicated to the comparison of Initial Coin Offering and Initial Public Offering with a special focus on the different economic motivation behind both phenomena. In the beginning the thesis describes the cryptocurrency basics such as what is blockchain, wallet and the difference between coins and tokens. Thesis then contains the descriptions of ICO phases, with a focus on the division of ICO on two parts, the public phase in which the retail investors take part, and the pre-sale phase in which the big investors take part. The next section contains the most important declarations and notices concerning ICO and cryptocurrencies, published by the regulatory bodies with a special focus on ESMA, FINMA and SEC. The description of the regulatory framework in the world is followed by the largest section of the thesis, which is dedicated to the legal classification of cryptocurrencies. The author concludes that cryptocurrencies are incorporeal movable things under Czech civil code and by no means can be considered security under Czech civil law. Civil law classification however does not prevent a different public law classification. Based on the financial instrument regulation, some of the cryptocurrencies might be considered a transferable security with all the consequences resulting from such a qualification – especially the prospectus obligation. The thesis is concluded with a de lege ferenda reflection, in which the author reaches a conclusion that the ICO phenomenon has lost a lot of its attractiveness and we can't expect a special ICO legislation any time soon. The current legal framework is well applicable on cryptocurrencies.

Key words

Cryptocurrency, Initial Coin Offering, security